



AR 17-03

February 23, 2017

MEMORANDUM

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Subject: Conservative Campaign Committee (A13-15) - Referral Matters

On February 8, 2017, the Commission approved the Proposed Final Audit Report on the Conservative Campaign Committee. The report was released to the public on February 23, 2017. In accordance with the Materiality Thresholds for Unauthorized Committees, the Final Audit Report of the Commission includes a finding that meets the criteria for referral to the Office of General Counsel.

Finding 1 B – Failure to File 24/48 - Hour Reports for Independent Expenditures, p. 5: Amount in Violation \$286,286; Calendar Year 2012.

1-800-444-4444-1-800-6

All workpapers and related documentation are available for review in the Audit Division. Should you have any questions regarding this matter, please contact Ryan Krogen or Rickida Morcomb at 694-1200.

Attachment: Finding I B – Failure to File 24/48 - Hour Reports for Independent Expenditures,
p. 5

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Finding 1. Reporting of Apparent Independent Expenditures

Summary

During audit fieldwork, the Audit staff ascertained that CCC disclosed independent expenditures totaling \$1,339,170 on Schedule E (Itemized Independent Expenditures). Of these expenditures, CCC did not properly disclose independent expenditures totaling \$12,168 that were publicly disseminated prior to payment and therefore required reporting as memo entries on Schedule E, as well as reporting as debt on Schedule D (Debts and Obligations). Additionally, the Audit staff identified disbursements disclosed as operating expenditures on Schedule B, Line 21b (Operating Expenditures) totaling \$294,036 which appear to be independent expenditures.

Of the \$1,339,170 independent expenditures reported on Schedule E, CCC did not file 24-hour reports for \$12,302 of them in a timely manner and did not file any 24-hour reports for \$3,774 of them. Additionally, for the \$294,036 disclosed as operating expenditures which appeared to be independent expenditures, CCC did not file 24/48-hour reports totaling \$270,210.

CCC did not submit a response to the Interim Audit Report. In response to the Draft Final Audit Report, CCC addressed the items in question by stating they were for fundraising purposes, not electioneering, and therefore did not require reporting as independent expenditures. CCC did not address the expenditures totaling \$12,168 that should have been reported as memo entries on Schedule E and debt on Schedule D. For the 24/48-hour reports, CCC stated its goal is to comply and timely file; and it has tightened procedures to ensure that future items are timely filed. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considered these expenditures to be independent expenditures.

The Commission approved a finding that CCC did not properly disclose apparent independent expenditures totaling \$294,036 on Schedule E and a finding that CCC did not properly disclose seven independent expenditures totaling \$12,168 that were publicly disseminated prior to payment as memo entries on Schedule E and as debt on Schedule D.

The Commission also approved a finding that CCC untimely filed 24-hour reports for independent expenditures totaling \$12,302 and approved a finding that CCC failed to file 24/48-hour reports for independent expenditures totaling \$3,774 and \$270,210 for apparent independent expenditures.

Legal Standard

A. Definition of Independent Expenditures. An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your

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Congressman,” or through an unambiguous reference to his or her status as a candidate, such as “the Democratic Presidential nominee” or “Republican candidate for Senate in this state.”

Expressly advocating means any communication that:

- Uses phrases such as “vote for the President” or “re-elect your Congressman” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

B. Disclosure Requirements – General Guidelines. An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii), 104.4(a) and 104.11.

C. Last-Minute Independent Expenditure Reports (24-Hour Reports). Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20th day but more than 24 hours before the day of an election, must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required each time additional independent expenditures aggregate \$1,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

D. Independent Expenditure Reports (48-Hour Reports). Any independent expenditures aggregating \$10,000 or more with respect to any given election, at any time during a calendar year, up to and including the 20th day before an election, must be disclosed within 48 hours each time the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. A 48-hour report is required each time additional independent expenditures aggregate \$10,000 or more. The date that a communication is publicly disseminated serves as the date that the committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).

E. Formal Requirements Regarding Reports and Statements. Each political committee shall maintain records with respect to the matters required to be reported which shall provide in sufficient detail the necessary information and data from which the filed reports may be verified, explained, clarified, and checked for accuracy and completeness. 11 CFR §104.14(b)(1).

Facts and Analysis

A. Reporting of Apparent Independent Expenditures

1. Facts

During audit fieldwork, the Audit staff reviewed disbursements to ensure that independent expenditures were disclosed correctly on Schedule E, including disclosing the correct memo and debt entry, if required. The Audit staff noted that CCC disclosed independent expenditures totaling \$1,339,170 on Schedule E; however, CCC made additional apparent media-related expenditures totaling \$294,036 and disclosed them as operating expenditures. A review and analysis of these expenditures revealed the following:

a) **Apparent Independent Expenditures Reported as Operating Expenditures (Copy of Communication Made Available)**

CCC made 39 apparent independent expenditures totaling \$294,036 for which it provided invoices, television and radio advertisements, fundraising blast emails, and additional supporting documents to the Audit staff. All of these communications totaling \$294,036 contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a). The television and radio advertisements included statements such as: "Defeat Obama Tele-thon", "Defeat Obama Radio-thon" and "Rebuild America, Defeat Obama Tour".

The fundraising blast emails included links to television and radio advertisements, as well as express advocacy language within the body of the email. The emails included express advocacy phrases such as: "Defeat Barack Obama" and "We're going to stop Barack Obama from getting Wisconsin's 10 Electoral Votes".

b) **Independent Expenditures Reported on Schedule E (Independent Expenditure Schedule) – Disclosure Errors**

CCC made 240 independent expenditures totaling \$1,339,170 which were reported on Schedule E. CCC did not properly disclose seven independent expenditures totaling \$12,168 that were publicly disseminated prior to payment and therefore required reporting as memo entries on Schedule E. CCC should have disclosed memo entries on Schedule E when the communications were disseminated in addition to the reporting at the time of payment. This amount should also be reported as a corresponding debt on Schedule D (Debts and Obligations).

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff presented the schedule of apparent disclosure errors for independent expenditures. In response to the exit conference, CCC provided additional documentation including copies of seven major fundraising blast emails totaling \$100,374. Upon review, the Audit staff determined these email communications included express advocacy, but were not properly reported as independent expenditures. The cost of these fundraising emails is part of the \$294,036 in section A.1(a) above.

The Interim Audit Report recommended that CCC provide documentation and evidence that apparent independent expenditures totaling \$294,036 did not require reporting as independent expenditures. Evidence should have included invoices with the corresponding communications and, where applicable, CCC's payment information. Absent such evidence, CCC should have amended its reports to disclose these disbursements as independent expenditures on Schedule E and submitted revised procedures for reporting independent expenditures. The Interim Audit Report further recommended that CCC amend its reports to include the reporting of \$12,168 in independent expenditures as memo entries based on the date in which the materials were disseminated and report this amount as a corresponding debt on Schedule D.

3. Committee Response to Interim Audit Report

CCC did not submit a response to the Interim Audit Report, nor were amended disclosure reports filed. Absent evidence that the expenditures in question did not require reporting as independent expenditures, the Audit staff considered these expenditures to be independent expenditures.

4. Draft Final Audit Report

The Draft Final Audit Report noted that no documentation or evidence was provided by CCC to substantiate that apparent independent expenditures totaling \$294,036 did not require reporting as independent expenditures. In addition, CCC did not amend its reports to include \$12,168 in independent expenditures as memo entries based on the date in which the materials were disseminated and report this amount as a corresponding debt on Schedule D.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, CCC addressed the items in question by stating they were for fundraising purposes, not electioneering, and therefore did not require reporting as independent expenditures. CCC did not file amended disclosure reports as recommended. Also, CCC did not address the expenditures totaling \$12,168 that should have been reported as memo entries on Schedule E and debt on Schedule D. Absent evidence that the expenditures in question did not require reporting as independent expenditures, the Audit staff maintained that these expenditures were independent expenditures.

Commission Conclusion

On October 24, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CCC did not properly disclose apparent independent expenditures totaling \$294,036 on Schedule E and did not properly disclose seven independent expenditures totaling \$12,168 that were publicly disseminated prior to payment as memo entries on Schedule E and as debt on Schedule D.

The Commission approved the Audit staff's recommendation.

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B. Failure to File 24/48-Hour Reports for Independent Expenditures

1. Facts

The Audit staff reviewed independent expenditures reported by CCC, as well as the apparent independent expenditures noted above, to determine whether additional reporting of a 24/48-hour report was required.¹ The following was noted:

a) Independent Expenditures Reported on Schedule E (Independent Expenditure Schedule)

Of the \$1,339,170 reported on Schedule E:

- i) CCC failed to file 24-hour reports for three disbursements totaling \$3,774.
- ii) CCC untimely filed 24-hour reports for ten disbursements totaling \$12,302, which were generally two to three days late and were prior to the general election.

b) Apparent Independent Expenditures Reported as Operating Expenditures

Of the \$294,036 in apparent independent expenditures reported on Schedule B, CCC did not file 24/48-hour reports totaling \$270,210.²

2. Interim Audit Report & Audit Division Recommendation

At the exit conference, the Audit staff provided the CCC representative with a schedule of undisclosed or late filed 24/48-hour reports. The CCC representative did not provide any comments.

Absent documentation and evidence that apparent independent expenditures noted above in section A.1(a) did not require reporting as independent expenditures, the Interim Audit Report recommended that CCC provide documentation to support that the 24/48-hour reports, totaling \$286,286 (\$3,774+ \$12,302 + \$270,210) were timely filed or that the reports were not required. Such documentation should have included support for the date of public dissemination to determine whether or not a 24/48-hour report was required.

3. Committee Response to Interim Audit Report

CCC did not submit a response to the Interim Audit Report. Absent evidence that the expenditures in question did not require reporting as independent expenditures and did not require 24/48-hour reports, the Audit staff considered these expenditures above as requiring 24/48-hour reports.

¹ The date the expenditure is publicly distributed serves as the date that the independent expenditure is made for purposes of the additional 24/48-hour report filing requirement. In the absence of a known date for public dissemination, the Audit staff used the invoice date or date of incurrence to determine if a 24/48-hour report was required. The Audit staff used the invoice date for 15 of the payments, totaling \$125,582, to determine if a 24/48-hour report was required.

² There was \$23,826 (\$294,036 - \$270,210) in apparent independent expenditures reported as operating expenditures that did not require 24/48-hour reports. Based on the available documentation, these expenses were publicly disseminated outside of the 24/48-hour report requirement periods for California's Primary Election (1/1/12 - 6/3/12) and General Election (1/1/12 - 11/4/12).

4. Draft Final Audit Report

The Draft Final Audit Report acknowledged that CCC did not provide documentation to support that the 24/48-hour reports totaling \$286,286 (\$3,774+ \$12,302 + \$270,210) were timely filed or that the filing of these reports was not required.

5. Committee Response to the Draft Final Audit Report

In response to the Draft Final Audit Report, CCC stated its goal is to comply and timely file; and it has tightened procedures to ensure that future items are timely filed. In addition, CCC stated it has discussed how to improve the communication of the consultants' work with its treasurer. CCC did not specifically address the apparent independent expenditures totaling \$270,210.

Commission Conclusion

On October 24, 2016, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that CCC untimely filed 24-hour reports for independent expenditures totaling \$12,302 and failed to file 24/48-hour reports for independent expenditures totaling \$3,774 and \$270,210 for apparent independent expenditures.

The Commission approved the Audit staff's recommendation.

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